Supreme Court, U.S.
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No. 07-

In the Supreme Court of the United States

United States of America
Respondent-Appellee,
v.
George Clive Hook,
Petitioner-Appellant.

On Petition for Writ of Certiorari to the

UNITED STATES COURT OF APPEALS
for the
SEVENTH CIRCUIT
(No. 06-1362)

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QUESTIONS PRESENTED

Whether the United States of America can unilaterally and retrospectively add to the sentence imposed by the Sentencing Judge without violating the 4th, 5th, 8th, 9th, 10th, and 13th Amendments, Article I, §§ 8 and 9, Article IV, § 9 of the United States Constitution and the separation of executive, judicial and legislative powers expressed in all of the provisions thereof.

Whether the 7th Circuit Court of Appeals' repeated pattern of decision by elision of case facts and applicable legal argument constitutes an endemic violation of litigants constitutional and statutory rights to appeal conduct of US such as to require exercise by the Supreme Court of its supervisory authority over that inferior court and the imposition of lasting remedy.

LIST OF PARTIES

The Parties to this proceeding are George Clive Hook and the United States of America. Accordingly, service has been made on the Solicitor General as required by Supreme Court Rule 29.4.(a).

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PETITION FOR WRIT OF CERTIORARI

George Clive Hook respectfully petitions for issuance of a Writ of Certiorari to review the Opinion of the Seventh Circuit Court of Appeals, *US v. Hook*, 471 F.3d 766 (7th Cir. 12/13/2006), which affirmed the decision of District Judge Lefkow that DNA collection was a condition of Hook's sentence of supervised release and requiring him to submit thereto even though such condition did not exist at the time of his sentencing and therefore, Judge Mihm, the sentencing judge could not and did not impose DNA extraction as a condition of Hook's sentence of supervised release. Hook seeks the Writ being firmly convinced that such *ex post facto* modification of his sentence constitutes an egregious violation of his constitutional rights as set forth hereinafter, including his right to be free from the cruel and unusual punishments abounding from the specter of constant revision of his sentence at the whim of the government and his ever continuing enslavement in consequence thereof.

OPINIONS BELOW

On 1/20/2006, Judge Lefkow issued her Memorandum Opinion and Order denying Hook's verified petition wherein she ordered him to comply with the Probation Officer's request for a blood sample and denied his request that his supervised release be terminated as a sanction for the government's attempt to impose a new sentence condition on him which violated his constitutional and statutory rights. Her Memorandum Opinion and Order is set forth in the Appendix which accompanies this Petition for Writ at pages 19-32.

On 12/13/2006, Circuit Judge Manion rendered the Opinion of the Panel, including Circuit Judges Posner, and Williams. His Opinion is set forth in the Appendix which accompanies this Petition for Writ at pages 1-17 and at 471 F.3d 766.

JURISDICTION

The Supreme Court has jurisdiction pursuant to Article III of the United States Constitution and 28 USC 1254(1) as a result of the decision of the Seventh Circuit Court of Appeals, 471 F.3d 766 (7th Cir. 12/13/2006), wherein that Court affirmed denial of Hook's verified petition to the district court for the Northern District of Illinois for declaration of constitutional rights, to enjoin violations of the terms of his supervised release by the United States termination of supervised release as a sanction against the United States for said violation of the terms of Hook's supervised release, and protection from the unconstitutional and otherwise unlawful behavior of the United States toward Hook, respectively, pursuant to 18 USC 3583(e)(1), 28 USC 1361, 28 USC 1391, 28 USC 1651, 28 USC 2201 et seq., 28 USC 2241 and the inherent powers of the federal district court, the denial of which petition by Judge Lefkow had resulted in Hook being ordered to submit to DNA extraction when that was not a part of his sentence to supervised release and therefore unconstitutional.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional provisions involved herein are Article I, §§ 8 and 9, Article IV, § 2, the 4th, 5th, 8th, 9th, 10th and 13th Amendments, and separation of executive, judicial and legislative powers expressed by and underlying the

Constitution. Statutory provisions involved herein are 18 USC §§ 664, 1343, 1956, 3583, 3601, 3603, and 3663; 28 USC §§ 1291, 1361, 1651, 2201, 2241, and 2255; 42 USC 14135a et. seq.; USSG §5D; and Department of Labor Regulation § 2510.3-101. As these provisions are lengthy, they have been cited here and set forth in full in the Appendix as permitted by Supreme Court Rule 14(f).

STATEMENT OF THE CASE

This case was commenced when Hook petitioned the United States District for the Northern District of Illinois, Eastern Division, for relief from the Probation Office assertion that the Justice for All Act of 2004 would require Hook to submit to DNA Extortion. Hook challenges the application of the Justice for All Act of 2004 to him as unconstitutional, an unlawful modification of his sentence, a breach of contract and a disregard of his supervised release status.

On 5/27/98, Judge Mihm imposed a sentence for felonies allegedly committed in the summer of 1992, specifically "unlawful conversion" [actually a lawful secured loan] of "pension plan assets" [rather "underlying assets" not subject to ERISA investment restrictions per Department of Labor. Reg. §2510.3-101] to the use of an "employer" [actually a "former employer," hence not a "prohibited" person or transaction] violating 18 USC 664 [but missing the critical offense and jurisdiction element, i.e., that the plan be subject to any provision ERISA "title I," a "terminated plan" not being subject to any such provision], and related wire fraud [sending the trustee's directions to the terminated plan custodian]violating 18 USC 1343 [except there was no fraud, deception, or scheme therefor] and

related money laundering [depositing loan proceeds via federal wire from lender's bank to borrower's bank] violating 18 USC 1956 [except there was no predicate unlawful act and no concealment], which included a term of three years' supervised release after seven years' imprisonment [despite statement in the pre-sentence report that there was no victim loss]. Having received the maximum good time credit permitted by the Bureau of Prisons [12.8% instead of the statutory 15%], on July 26, 2004, Hook began his term of supervised release pursuant to the conditions established by Judge Mihm and set forth in writing as a part of the "Judgment in a Criminal Case" filed 5/27/1998. [Record on Appeal Document #2, p. 27-28] Thereupon US Probation Officer Morton provided Hook, as required to do by 18 USC 3583(f), with "a written statement that set forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for [Hook]'s conduct and for such supervision as is required." Said written statement was pages "3" and "3.02" of the "Judgment in a Criminal Case" [Record on Appeal Document #2, pp. 26-27]. i.e., necessarily, as a matter of law, the very supervised release conditions that Judge Mihm had imposed at sentencing in 1998. There was no legal or factual basis for imposing DNA Extortion on Hook in the summer of 1992, when Hook allegedly committed the federal crimes which led to federal punishment, including supervised release; nor in May, 1998, when Hook was sentenced and specific supervised release conditions were imposed by Judge Mihm as a part of that sentence; nor in July, 2004, when Hook commenced his supervised release and received a written statement of such conditions from PO Morton. Not until October 30, 2004 did the Justice for All Act of 2004 [Public Law 108-405] become effective.

That Act expanded the definition of "qualified federal offense" of the DNA Analysis Backlog Elimination Act of 2000 [42 USC 14135a(d)], which also did not exist at the time of Hook's alleged offenses or at the time of his being sentenced, from "sex offenders and violent criminals" to "all felons." In sum, there were no legal or factual bases for imposing a DNA extraction condition on Hook.

Hook's Verified Petition [Record on Appeal Document #2] was filed in the District Court for the Northern District of Illinois, to which Hook's supervised release was transferred at the request of the Probation Office, from the Central District where he was tried. [Record on Appeal Document #1] In Hook's Verified Petition, Hook asserted the inapplicability of DNA Extraction to him by virtue of the United States Constitution, his contractual right to adherence by US to the conditions of his supervised release, and his status as a supervised releasee subject to specific supervised release conditions which were a part of his sentence and therefor unalterable unilaterally by US. Judge Lefkow denied Hook's Verified Petition and ordered DNA extraction. The denial of the Verified Petition and that Order were the subjects of appeal, which denial the Seventh Circuit Court of Appeals affirmed.

In so doing, Circuit Judge Manion posited that DNA collection was a subset of supervised release condition imposed by Judge Mihm to "follow the instructions of the probation officer" without addressing Hook's position that such an instruction to submit to DNA extraction was not within the statutory scope of that instructional authority and therefore not legal. Furthermore, Judge Manion assumed that the proceeding precipitated by Hook's verified petition transposed itself into a Federal Rule of Criminal Procedure pursuant to Rule 32.1(c)(1) and that permitted

Judge Lefkow to modify the conditions of Hook's supervised release to include DNA extraction, even though she did not purport to impose any additional conditions nor modify existing conditions. Neither Hook nor the Government made request therefor. Nor did she interpret Hook's existing conditions to include DNA extraction. She merely decided that because Hook was on supervised release, the Federal Government could do with him whatever it wanted and Hook would have no basis, constitutional or otherwise to complain.[1] Modification would have required her specifically, to ensure that "the particular condition is reasonably related to specified sentencing factors, namely the nature and circumstances of the offense and the history and characteristics of the defendant, adequate deterrence, protection of the public from crimes of the defendant, and, for the defendant, needed educational or vocational training, medical care, or other correctional treatment in the most effective manner, while not depriving defendant of liberty any more than reasonably necessary to achieve these goals, and consistent with any pertinent policy statements issued by the Sentencing Commission. Such criteria must be satisfied at initial imposition. See 18 USC 3583(c), incorporating these criteria of 18 USC 3553. Such criteria must be satisfied no less so and premised on the initial imposition if there is a later modification. See 18 USC 3583(e)(2), which also adds that modification must "be pursuant to the Federal Rules of Criminal Procedure relat-

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[1]Judge Manion subscribes to this horrid conclusion in his appellate opinion by his circumlocutory conclusion that even if DNA extraction were not a condition of his supervised release, Hook could be committing a federal misdemeanor by not submitting to DNA extraction solely because he was on supervised release.

ing to modification[2] and the provisions applicable to the initial setting of the terms and conditions of post release supervision." *US v. Holm*, 326 F.3d 872(7th Cir. 2003). *US v. Sines*, 303 F.3d 793 (7th Cir. 2002). Extraction of Hook's DNA could not have met any of these criteria. Nor did Judge Lefkow make any of these necessary predicate determinations.

Therefore, Judge Manion's reliance on *US v. Nonahal*, 338 F.3d 668 (7th Cir. 2003) is unjustified.[3] Thus did he illogically circumvent Hook's argument of sentence finality, as well as Hook's argument that 18 USC §§ 3583(d), 3601, 3603(1), 3603(3), and § 7(b) of the DNA Analysis Backlog Identification Act of 2000, limited the instructions that the probation officer could give to those conditions of supervised release imposed by the sentencing judge at the time of sentencing.

Judge Manion dismissed Hook's contract claim, asserting that there was no contract because Hook had pleaded Not Guilty, ignoring Hook's argument that 18 USC 3603(1) required the probation officer and Hook to acknowledge the conditions of supervised release at the outset of Hook's term of supervised release, which they did. Although citing the case for his own argument, Judge Manion also ignored Hook's argument that Judge Easterbrook had

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[2]Indeed, Rule 32.1 requires a trigger for hearing, e.g., a violation of an existing condition of supervised release. That trigger was absent in Hook's case. Therefore, the provision for modification of Hook's supervised release conditions was not implicated thereby.

[3]That case is also inapposite because, while there too the district judge had not provided any reasons in violation of Circuit Rule 50, Judge Ripple opined that the district court's reasons for denying the defendant's requested modification were apparent.

sanctioned application of contract principles to the argument when he applied contract principles in his concurring opinion in *Green v. Berge*, 354 F.3d 675, 680 (7th Cir. 2004),[4] citing *US v. Cranley*, 350 F.3d 617 (7th Cir. 2003) as support. He also ignored the social contract between government and citizen which requires both to honor obligations to the other. As for Hook's abuse of discretion claim, he took no cognizance that Judge Lefkow's failure to exercise discretion, as demonstrated by her failing to give any reasons for denying termination, in clear violation of 7th Circuit Rule 50, indeed her failure to address any of the criteria for termination, or, indeed, address the issue at all, was *per se* an abuse of discretion.

Judge Manion's analysis of Hook's constitutional arguments is cliché ridden rather than analytical. He asserts "special need" for Hook's DNA so to "identify" and supervise him, ignoring, as did Judge Lefkow, that its only intended and practical use is law enforcement, as confirmed by the FBI,[5] which puts it squarely within the 4th Amend-

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[4]"People who object to the conditions of release before the end of their sentences may say no and remain in prison; if they say yes, they have consented to the conditions." He confuses parole and supervised release, but the contract principle applies to the latter equally nevertheless.

[5]According to the FBI CODIS website "The FBI Laboratory's Combined DNA Index System (CODIS) blends forensic science and computer technology into an effective tool for solving violent crimes. CODIS enables federal, state, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders. CODIS began as a pilot project in 1990 serving 14 state and local laboratories. The DNA Identification Act of 1994 (Public Law 103

ment's ambit rather than beyond. He ignores that search of Hook was specifically circumscribed by Hook's supervised release conditions which did not include body fluid extractions or confiscations except of that which was contraband in plain view. He dealt not at all with Hook's legitimate and reasonable expectations deriving from the specific conditions imposed on him. He asserted that drawing blood was routine, ignoring that this was without consent, if condoned by the courts would allow any jurisdiction through which Hook passed to collect his blood, that if this condition could be imposed there was effectively no limit to *ex post sentencing* conditions that could be imposed, putting Hook in constant fear, constant threat of invasions and other consequences for their violation and constant expenditures of time and money to obtain interpretation and relief from them, essentially forcing Hook into anonymous exile to assure his safety from a cruel and unusual existence. The judges' minimization of the ambit of cruel and usual punishment is premised on it being a pin prick rather than an unfettered subjugation to the whims of police and whatever legislative bodies, federal, State and local, that is the actual punishment. The judges ignored that they destroy finality of the sentence imposed and served so that the conditions of the felon's existence may be forever changing and uncertain as the whims of his enslavers dictate. While asserting that felons are not a suspect class deserving protection, they persuasively make an unintended case for the opposite. They ignored that Hook had identified those similarly situated—other mild mannered elderly non-ravagers--

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322) formalized the FBI's authority to establish a national DNA index for *law enforcement purposes*."

not subject to government invasion of their bodies to extract the essence of their being.

For much of Hook's constitutional arguments, Judge Manion resorts to that favorite of the Circuit, waiver. Despite Hook's clear and specific description and analysis of how DNA extraction violates Hook's 9th, 10th and 13th Amendment rights, Judge Manion eludes meaningful address by parochially asserting that Hook cited no supporting authority, ignoring that the Constitution is its own authority and that many now apodictic propositions were asserted initially without precedent. Judge Manion asserts that if the legislature did not intend its additional impositions on sentences to be punishment, the *ex post facto* prohibition is not violated; that even though only felons on supervised release are singled out for prosecution and punishment for not submitting to DNA extraction, the bill of attainder prohibition is not violated. The mere recitation reverberates in absurdity.

REASONS FOR GRANTING THE WRIT

The Supreme Court should address whether United States can unilaterally and retrospectively add to the sentence imposed by the Sentencing Judge without violating the 4th, 5th, 8th, 9th, 10th, and 13th Amendments, Article I, §§ 8 and 9, Article IV, § 9 of the Constitution and the separation of executive, judicial and legislative powers. This question transcends Hook's case, which requires him to submit to DNA extraction even though it was not a condition of his supervised release and has no rational nexus with him or his circumstances, because if the answer to the question is "Yes," finality, in particular sentence finality, will be eliminated and all those sentenced at any time will

be subjected retrospectively to the prospective whims of legislature and police alike, unconfined to any specific period or purpose ascertainable at the time of sentencing. As the 7th Circuit's opinion in *Hook* now stands, and given the expansion of federal[6] and State legislation to include anyone who is detained for any reason, everyone becomes subject to DNA extraction and whatever whim of politician and police may impose. The Supreme Court must stop this most insidious and far reaching violation of the most basic rights if the citizenry are to have any security from the encroachments of federal, State and other governments.

A judgment has finality which cannot be set aside pre-judicially by one of the parties. Supervised release is part of the final judgment. Final judgments are final. *US v. Addonizio*, 422 US 178, 184 (1979). DNA Extraction was not one of the supervised release conditions that Judge Mihm imposed. DNA extraction from Hook is contrary to §7(b) of the DNA Analysis Backlog Identification Act of 2000, which first imposed a DNA requirement and makes clear that DNA condition must be imposed by the sentencing judge (Appendix, p. 45). As Hook's supervised release conditions were set by Judge Mihm before this statute came into existence, necessarily Hook's DNA Extraction was not one of Hook's supervised release conditions. A sentence may be modified only by the sentencing court in specific circumstances. The DNA extraction condition cannot be imposed on Hook after the fact.

The status of supervisor and supervisee was created by statute [18 USC §§ 3583(d), 3601, 3603(1), and 3603(3)](Appendix, p. 45), which provide that supervised

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[6]The DNA Fingerprint Act of 2005 (H.R. 2796 and S. 1606), now in the Judiciary Committee, would authorize DNA extraction from anyone arrested or detained.

release shall be pursuant to the conditions set by the sentencing judge as part of the judgment.

DNA extraction is contrary to the agreement between Hook and US. See Statement of the Case, pp.4-5, 7-8 *supra.* As a matter of contract principle, Hook's supervised condition 10 abrogated 4th Amendment protection solely to the limits of that condition.[7] Nor can the 4th Amendment be subsumed by the generality of condition 3 which is that "the defendant shall...follow the instructions of the probation officer." This condition cannot compel Hook to follow instructions which are unlawful or beyond the scope of his supervised release conditions. [18 USC§§ 3601 and 3603.]

Forced DNA Extractions from federal supervised releasees violates the 4th Amendment in the absence of individualized suspicion. *Illinois v. Caballes*, 543 US (2005), *Hiibel v. Sixth Judicial District Court of Nevada*, 542 US 177 (2004), *Indianapolis v. Edmond*, 531 US 32 (2000), *Ferguson v. City of Charleston*, 532 U.S. 67 (2001). The Justice for All Act of 2004 is unique in applying to persons who have not been convicted and are in no way even suspected of crimes involving anything that would make their DNA relevant.

Application of the Justice for All Act of 2004 to Hook violates the 4th Amendment,[8] there being no warrant, no "special need," nor "totality of circumstance" to abrogate the proscription, *Mincey v. Arizona*, 437 US 385

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[7]"contraband observed in plain view of the probation officer" during "visit" "at home or elsewhere,"

[8]DNA extraction is a search without probable cause or reasonable suspicion, as any inquiry that goes beyond mere physical characteristic constantly exposed to public view constitutes a search. *Cupp v. Murphy*, 412 US 291, 295 (1973).

(1978), *Katz v. US*, 389 US 347(1967), no individualized suspicion, *Indianapolis v. Edmond*, 531 US 32 (2000), *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), no consent, *U.S. v. Cranley*, 350 F.3d 617 (7th Cir. 2003), *Green v. Berge*, 354 F.3d 675 (7th Cir. 2004), no authorization by virtue of the supervised release conditions imposed by Judge Mihm and to which Hook and US agreed upon the commencement of his supervised release, *Green v. Berge,* no "contraband observed in plain view of the probation officer" during "visit" "at home or elsewhere," which is the outer limit of the incursion into Hook's 4th Amendment rights permitted under the supervised release conditions specified by Judge Mihm [Record on Appeal Document #2, p.26: Standard Condition 10], no substantial suspicion which precipitated the searches in *Griffin v. Wisconsin*, 483 US 868 (1987), *US v Knights*, 534 US 112 (2001), no benefits conferred on Hook amounting to implied consent, *Skinner v. Railway Labor Executives Assn.*, 489 US 602(1989)[drug tests for railway employment]; *Treasury Employees v. Von Raab*, 489 US 656 (1989) [drug tests for United States Customs Service employees seeking promotion to certain sensitive positions], *Veronia School Dist. 47J v. Acton*, 515 US 646 (1995)[drug tests for high school students wishing to participate in interscholastic sports], and *Board of Education v. Earls*, 536 US 822 (2002)[drug tests for high school students wishing to participate in interscholastic extra-curricular activities], *Chandler v. Miller*, 520 US 305 (1997) [candidate seeking political office], no violation of a lawful instruction of a probation officer that is applicable to Hook under his supervised release conditions, because a lawful instruction cannot exceed the parameters of those judicially determined conditions which are part of the sentence, which is a final judgment, or the

statutory mandate of the probation officer limiting him to those conditions [18 USC 3601].

Neither of the accepted breaches of the 4th Amendment Right, the "special needs" [2nd, 7th and 10th Circuits], nor the "totality of circumstances" [4th, 5th and 9th Circuits] abrogations thereof apply to Hook. Each analysis requires initial determination that a primary purpose of the search not be to obtain evidence of criminal wrongdoing. If that is a primary purpose, the 4th Amendment is violated, and analysis ends. *Indianapolis v.* Edmond, 531 US 32, 44, 48 (2000). That is where the analysis should have ended in *Hook* because the primary, if, indeed, not the sole purpose, of the Justice for All Act of 2004, is to obtain evidence of criminal wrongdoing, as Judge Lefkow made clear, unknowingly, by the following determinations: (1) DNA collection enables law enforcement agencies, to which the information is confined primarily, to match DNA found at crime scenes to solve past, present and future crimes, (2) the DNA collection is used to make positive comparisons with crime scene DNA that will exonerate the innocent and convict the guilty, (3) the latter will be prosecuted, convicted and incarcerated for their past crimes and not be loose to strike again. [Record on Appeal Document #17, pp. 7-8] Collections from the crime scene, collections from the veins of supervised releasees are collections of evidence to find criminal wrongdoers. Comparisons with each other are solely for that purpose. Each and all of that activity is quintessential "law enforcement," compelling application of the 4th Amendment protections and proscriptions. Unlike, the high schoolers of *Board of Education v. Earls*, 536 US 822 (2002), those whose DNA is extracted pursuant to the Justice for All Act of 2004 can expect more than loss of their "privilege" to engage in interscholastic extra-

curricular activities. 2004 DNA extract goes to the FBI, the most recognized *law enforcement* agency in the World. From there it is transcribed and available to all federal, State and other *law enforcement* agencies for the purpose of comparison with all past, present, and future crime scene evidence. Accordingly, there are no "non-law enforcement purposes" of the Justice for All Act of 2004. What is the difference between a suspicionless interdiction of human veins in search of crime evidence, as in *Hook*, and suspicionless interdiction of traffic arteries in search of crime evidence, as in *Edmond*? None. Accordingly, the holding of *Hook* must be the same as *Indianapolis v. Edmond*. *Edmond* gives definition to what is meant by "special needs" beyond the normal need for law enforcement by stating what they are not. They do not encompass a program whose purpose was to detect evidence of criminal wrongdoing, nor investigate crime, nor obtain criminal evidence, nor control crime, which describes the very program of the Justice for All Act of 2004.

Congress' purpose in enacting the Justice for All Act of 2004 was crime detection. The courts are obliged to discern the Act's pragmatic purpose, *Bond v. U.S.*, 529 US 334 (2000), *Whren v. US*, 517 US 806 (1996), *Florida v. Wells*, 495 US 1 (1990), which is detecting criminals.

Merely keeping a database of the results of searches does not absolve such searches of 4th Amendment constraints. If that were true, there never was 4th Amendment protection. Record keeping has been an essential aspect of law enforcement since the beginning of crime. The invention of the computer and replacement of "record" with computer jargon does not erase the 4th Amendment.

Judge Manion conceded that the Act is for law enforcement purposes but attempted to extricate it from 4th

Amendment constraints by identifying "special needs." Where Judge Lefkow articulated none other than [Record on Appeal Document #17, p. 7] law enforcement objectives [Record on Appeal Document #17, pp. 7-8], i.e., matching crime scene evidence, positive identification of crime perpetrators, and their incarceration to preclude their committing future crimes, Judge Manion posits best identification of the supervised releasee and supervision of the releasee. The least examination exposes them as deceptions. DNA provides no basis for ready and ordinary identification. Matching takes a special scientific process which must be performed with exactitude in a specialized laboratory by experts. Even then, it does not identify; it merely does or does not exclude. The key is matching. Without matching to DNA left elsewhere, DNA extraction has no utility.

DNA collection has nothing to do with supervision. Quite the contrary. As example is the best supervisory tool, when US attempts to impose conditions that the sentencing judge did not impose, unilaterally, retrospectively, US is setting an example of disregard for the Rule of Law and fair and equal treatment. Instead, US is demonstrating that "might makes right," "what US wants US gets, right or wrong," and "anything goes," "Just US."

Counterbalancing the absence of any special governmental needs, Hook listed numerous legitimate bases for his expectation of privacy, e.g., standard condition of supervision 10,[9] imposed as a part of his sentence in 1998; the

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[9]"10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer." [Record on Appeal Document #2, p.26] Surely, this means that Hook need not submit to blood extraction.

absence of statutory authority at the time of alleged offense, conviction, sentencing, commencement of supervised release; acknowledgement and agreement as to supervised release conditions by Hook and PO Morton, voluntary submission by Hook to three previous extractions ordered by PO Morton; Hook's expression of expectation of privacy by word in Hook's Verified Petition and by deed in preparing, filing Hook's Verified Petition, and facilitating his appeal, all manifesting the basic principle that every individual has the right to possession and control of his own person. *Terry v. Ohio*, 392 US 1 (1968), *Union Pacific R. Co. v. Botsford*, 141 US 250, 251 (1891).

The expansion of DNA collection to a person who has committed "any felony" puts the collection well beyond the penumbra of "special needs" and "totality of circumstances." Hook was convicted of unlawful conversion of pension plan assets to the use of an employer. No body fluids are involved in such an offense. Hook was also convicted of money laundering in connection therewith. No body fluids are involved in such an offense. Hook was also convicted of wire fraud. There is absolutely no rational basis for countenancing that even if Hook were prone to recidivism, he would commit a sex or violent crime. The 4th Amendment touchstone is reasonableness, and a search's reasonableness is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed to promote legitimate governmental interests, other than law enforcement. *Wyoming v. Houghton*, 526 US 295, 300 (1998). Here are none of the assumptions upon which the Supreme Court relied in permitting search and seizure in *US v. Knights*, 534 US 112 (2001), the farthest out expression of that Court on the subject to date. Even there, the Court re-

quired a reasonable suspicion as basis for condoning the search and seizure of things in Knights' house. Neither Hook's blood, nor his DNA contained in the microscopic nuclei of his microscopic cells is in plain view and available for confiscation by his probation officer pursuant to supervised release condition 10. If PO Morton wanted to conduct a search or seizure of contraband not in plain view, he had to go before a judge and explain what he wanted, why he wanted it in the context of probable cause to believe that a crime had been committed. As for the search and seizure of contraband, Hook necessarily has the reasonable expectation that his blood, indeed, any of his body fluids, not be regarded as contraband in plain view and subject to search and seizure.

Blood collection may be a minimal intrusion in some contexts. It is not when taken either forcefully by assault on his person and human dignity, nor when taken by consent coerced by government threat of imprisonment and loss of supervised release credit, nor when it will be done by an unknown person at a place and time not of Hook's choosing or within his control.

Identification as the purpose of DNA extraction provides basis for subjecting Hook to repeated blood letting every time his identification is sought, as if it were a card or print. This is truly intrusive to the point of being cruel and unusual punishment. Blood alone is not at issue, however. Hook's DNA will be subject to examination for all eternity, to scrutiny by law enforcement agencies, and to compel expensive explanation, expanding necessity to record his whereabouts for alibi [Federal Rule of Criminal Procedure 12.1], and expensive defense in any circumstance where his DNA or anyone's identical, similar, or mistakenly, is basis for accusations against him or his progeny. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. *Brinegar v. US*, 338 U.S. 160, 180 (1949).

5th Amendment—Self-Incrimination and Due Process. Common as it is to assert that the protection against self-incrimination applies only to testimony, *Pennsylvania v. Muniz*, 496 US 582 (1990), *South Dakota v. Neville*, 459 US 553 (1983), *California v. Byers*, 402 US 424 (1971), *US v Wade*, 388 US 218 (1967), *Schmerber v. California*, 384 US 757 (1966), *Holt v. US*, 218 US 245 (1910), such an interpretation does not comport with the specific language of the 5th Amendment. While "witness" has been construed to mean no more than sitting at the stand and giving oral testimony, eminent jurists, Brandeis, Black, Douglas, Fortas, Holmes, Marshall, Stevens, and Warren, albeit mostly in dissent, have expressed incredulity at this formulation, *Olmstead v. U.S.*, 277 US 438 (1928), *Breithaupt v. Abram*, 352 US 432 (1957), *Schmerber v. California*, 384 US 757 (1966). In ordinary parlance "witness" has always meant "something that serves as evidence: a sign...an attestation to a fact, a statement, or an event..." as well as "testimony" [The American Heritage College Dictionary, Third Edition, p.1550]. Production itself leading to evidence leading to prosecution is a testimonial act, a "witness" which violates the 5th Amendment. *Hubbell v. US*, 530 US 27 (2000). There is already limited vindication in the *fruit of the poisonous tree* doctrine. *US v. Patane*, 542 US 630 (2004), *Nix v. Williams*, 467 US 431 (1984), *Wong Sun v. US*, 371 US 471 (1963), *Nardone v. US*, 308 US 338 (1939), *Silverthorne Lumber Co. v. US*, 251 US 385 (1920), *Weeks v. US*, 232 US 383(1914). Sensible reasoning dictates extortion of body fluid from Hook would be unlawful. Accordingly, the fruits thereof, DNA, would violate his 5th Amendment right against self-incrimination. The Courts would have no problem with this concept were the fruit an utterance, either oral or written, obtained as a result of the unlawful search

and seizure, or *vice versa*, a physical object discovered as a result of a coerced confession.. DNA is the "case arising" described in *Hiibel v. Sixth Judicial District Court of Nevada*, 542 US 177 (2004), where sensibility must hold that extortion of DNA is self-incrimination as that term was meant by those who promulgated the 5th Amendment to preclude the Inquisition and the Star Chamber.

Schmerber v. California, 384 US 757 (1966), *Belgarde v. Montana*, 123 F.3d 1210 (9th Cir. 1997), *US v. Reynard*, 220 F.Supp.2d 1142 (S.D.Cal. 2002), *US v. Pipito*, 861 F.2d 1006 (7th Cir. 1987) tell of a single incident, a mere presence. DNA is of an entirely different order, telling not only of the instant but also of the entire biological evolution and prognostic of an individual and his relatives. This is too much personal information for any government[10] to have without consent. This is the stuff of Lombrosoan typing, discrimination, ethnic cleansing, without defense, or knowing.

The basic historical purpose of the 5th Amendment was to require that evidence against one be obtained from a source other than one's self, to prevent the ugly structures of Inquisition and Star Chamber. *Ullman v. US*, 350 US 422, 428 (1956). DNA Extortion as countenanced by the Justice for All Act of 2004 is the cornerstone of their reerection. DNA Extortion is one up on both. More than any mere oral or written utterance, it also includes the taking of something which may be preserved for planting at any crime scene, actual or not, to implicate the provider and his progeny, and thereby, at the very least, compel them to prove their innocence! Furthermore, being like "signs,"

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[10]History reveals that over time most governments descend into evil and oppression.

"runes," and "entrails," the provider and his progeny do not even have the "channel" to confront whatever the government asserts about DNA without assistance from an Oracle or High Priest who must rely on the cooperation of the very "law enforcement" persons who did the fraudulent plant. In addition to the 5th Amendment, the 6th Amendment right to confrontation is also implicated.

These concerns cannot be dismissed as something US would never stoop to.[11] Its criminal history shows that is possible, even likely; if not necessarily with respect to Hook, certainly with respect to someone.

5th Amendment--Taking without Just Compensation. Hook has right to his blood. It is his private property; his DNA his private property too.[12] US would take both to

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[11]For a few examples, see *U.S. v Stanley*, 483 US 669 (1987) [secret and non-consensual LSD experiments on soldiers]; secret and non-consensual Tuskeegee Syphilis Experiments spanning 40 years; and books: *Behold a Pale Horse* by William Milton Cooper[false discrediting and assassination], *Secret and Sensitive* by Stephen K. Knott [a history of despicable executive branch conduct from Washington to Bush], *Jacob's Ladder* by Bruce Joel Rubin(based on *Stanley* drug induced aggression experiments; also made into a nightmarish movie); and documented successful and attempted assassinations of foreign leaders and others.

[12]See *Dred Scott v. Sanford*, 60 US 393 (1856), *The Amistad*, 40 US 518 (1841) and the numerous cases gathered in each which hold that a slave is property. By virtue of the 13th Amendment, Hook is a slave to the extent of his conviction, currently compassed by his supervised release conditions, his master US. That which is beyond those conditions remains property. (Article I,§2,cl.3 instructs that such bifurcation is cognizable.) Since the conditions do not include Hook's blood or DNA, they are his property.

be used by it and other federal and State law enforcement agencies currently, and, whomever eventually. This taking occurs without offer of compensation, no condemnation proceeding, just further imprisonment for refusal, i.e., further full enslavement. Not even K*elo v. New London*, 125 S.Ct. 2655 (2005), countenances such taking, even for compensation, as it cannot be demonstrated that US custody of Hook's blood at great cost to the public and its transcription to a language that will never be used legitimately serves a better purpose than the use to which Hook is currently putting it, e.g. to preserve his life and health!

Article I, §9 protects Hook from DNA extortion, as Justice Chase so stated the proscription against *ex post facto* laws, derived from English common law and well known to the Framers of the Constitution, in *Calder v. Bull*, 3 Dall. 386 (1812). DNA Extortion from Hook is a violation of each of the four corners of the prohibition: the 1st because Hook's refusal to submit to DNA Extraction at any time relevant as aforesaid, could not have subjected him to up to one year in prison and up to $100,000 in fines, as his refusal to submit would have been innocent, as his refusal would not have been a violation of supervised release, as it would not have been a condition of supervised release; the 2nd because the crimes of which he was convicted become the equivalent of sex crimes and crimes of violence, subjecting him to an assault by US and making his blood available for illegitimate use at crime scenes past, present and future to falsely implicate him therein, subjecting him to an additional year in prison and an additional fine of $100,000; the 3rd because the conditions of his punishment are changed, made greater and substantially increase the potential for further and repeated harm and punishment; and the 4th because Hook's DNA, which hereto-

fore was not available as evidence against him, now become such simply by virtue of misinterpretation of law and facts. Application of the Justice For All Act of 2004, which did not become effective until more than 12 years after Hook's alleged commission of crimes in 1992, more than six years after his sentencing in 1998 to supervised release with the specific terms set by Judge Mihm, more than five months after his supervised release conditions were read to him by PO Morton as required 18 USC 3583(f) and 18 USC 3603(1) and which Hook was then required to acknowledge, as applied to Hook does violate the *ex post facto* prohibition of the Constitution .

The Justice for All Act of 2004 is a bill of attainder because it legislatively determines additional guilt and inflicts additional punishment upon identifiable individuals, "any felon," without provision of the protections of a judicial trial necessary to determine that there is any proper nexus of additional guilt or additional punishment. *Nixon v. Administrator General Services et al.*, 433 US 425(1977); *US v. Brown*, 381 US 437(1965); *US. v. Lovett*, 328 US303(1946); *Ex parte Garland*, 4 Wall. 333(1867); *Cummings v. Missouri*, 4 Wall. 277 (1867).

The Bill of Attainder Clause reflects the Framers' belief that the Legislative Branch is not suited to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons. It serves as an important bulwark against tyranny. DNA Extraction in the hope of gaining evidence with respect to the commission of unsuspected past, present, and future crimes or preventing the commission of future crimes is an act of tyranny. Putting a person in jail who does not present his blood in obeisance to such tyranny confirms the tyranny.

Article I, §9 is applicable to supervised release because supervised release is a part of the punishment for crimes of which one is convicted as provided by 18 USC 3583(a). An instruction by a probation officer which is without that penumbra is not a permitted instruction as it exceeds his authority under 18 USC §§ 3601 and 3603(3). If such an instruction could be valid, what is to prevent increasing the years of imprisonment, changing supervised release conditions to require a chip implant so that the whereabouts of every "felon" are known at all times, or, so that the "felon" may be automatically put to sleep every time his adrenaline reaches a certain level and some bureaucrat custodian presumes it to signal criminal activity?

Just as one component of the sentence, seven years in prison, a $100 fine, or a $735,000 restitution order cannot be increased to life, $10,000, or $10,000,000, after the fact, neither can the supervised release component of the sentence be increased in term or condition after sentencing. Such increases are prohibited by numerous constitutional provisions: due process, equal protection, *ex post facto*, cruel and unusual punishment. They are contrary to the reasonable expectations of the person sentenced and society too. Legislative revisions of sentences imposed by the Court are just not a permissible or expected part of our jurisprudence or any of our laws. It would be a basic violation of contract principles, even the covenant between a subject who voluntarily submits himself to sovereign authority based on the premises of just, fair and predictable treatment. It violates the basic tenets of society, the social contract and, equally basic, the essential covenant between each individual and his society for the mutual protection of all. Such a violation shakes the very foundations of society. If the judiciary, which is the primary protector against

such foundational destruction refuses this most basic of its roles, it ceases to have any meaningful purpose or role.

The 8th Amendment prohibits "cruel and unusual" punishment. The Founding Fathers would have ascribed that phrase to blood extraction.[13] That said, the inferior judges' focus on the specific act of DNA extortion as the cruel and unusual act misses Hook's point that if US can modify Hook's supervised release conditions unilaterally, Hook is subject to every imposition and harassment conceivable by any politician bent on cadging votes for "being tough on crime or criminals." The consequence is elimination of one as an individual, a private person, than which there is nothing more cruel and unusual.

Simply the worry engendered by not knowing who will make the extraction, their qualifications, and the inability to obtain such information and object if one is not satisfied as to the competence or beneficence of that person imposes a cruel and unusual punishment. Beyond that is the concern that what is done will be done badly, and be a permanent blot against Hook as well as his posterity without any ability either to know or rectify. These are the focus, not the properly done one time extraction of a few ounces of blood.

The 9th Amendment prohibits the denial or disparagement of rights retained by Hook despite the enumeration of certain rights set forth in the Constitution, thereby acknowledging that Hook has inherent rights as an individual and as a human being in addition to those specifically ac-

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[13] Vampires were feared and vilified. Leeching and other forms of bloodletting were permitted with great trepidation and only to remove evil humors and then to balance forces as a last resort, since last rights usually followed thereupon.

knowledged to him by the Constitution. Surely, the 9th Amendment includes among its protections Hook's right to his blood and his DNA free of perpetual pillory by the federal government. The Constitution itself is authority for such rights. Indeed, such rights transcend the Constitution and are explicit in the Nature of Man. Waiver for lack of authority recalls the fears that welled at the birth of the Constitution because no "bill of rights" was recited. Not to worry, opponents of recitation said the federal government was created as a limited one by the People. It was not an entreaty of defeated to victorious monarch,[14] or subjects to their sovereign (e.g. the Magna Carta, the Petition of Rights, or, indeed, the namesake English Bill of Rights). Therefore what specifically was not granted to the federal government was retained by the People, precisely the language of the ultimate 9th Amendment, which was one of the Amendments proposed by the first Congress as a Bill of Rights in 1789 and ratified in 1791. Some believed a recited Bill of Rights a mistake because an enumeration with inevitable omissions fed those unscrupulous enough to later assert "absence" meant absence,[15] instead of merely showing that man had not Cassandra's skill of foreboding. Interestingly, enumerating specific federal powers does not connote limitation while enumerating People's rights does, according to the inferior judges. Those who feared enumeration of rights would make subjects of citizens, but enumeration of powers not pond Leviathan might be pleased by his-

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[14]Hamilton, The Federalist, ed. Henry Cabot Lodge, New York, 1888, p.533.

[15]The Records of the Federal Convention of 1787, ed. by Max Farrand, New Haven, 1937, III,p.144.

tory's confirmation of their powers of prognostication, if not the unfettered powers and the loss of basic rights.

Constitutional guarantees of life, liberty and the pursuit of happiness are guarantees of Hook's right to his blood and the privacy of his DNA. Just because he was convicted [in violation of other Constitutional rights] cannot mean he has forfeited life, liberty, happiness, blood, and being, except to the extent carved out by the 13th Amendment.

The 10th Amendment acknowledges reservation to Hook of those powers not delegated to the US by the Constitution and not prohibited by it to the States. Article I, § 8 describes those crimes over which the federal government has power, only a few: counterfeiting, piracy and felonies on the high seas, crimes against the Law of Nations. Because of its plenary control over the military and the District of Columbia and other Places purchased by the Consent of the Legislature of the State of their locus, full sovereign rights to criminalize may be exercised by the federal government in those jurisdictions. Treason is added elsewhere. Again, the inferior judges eschew recognizing the Constitution as authority. However, it is the ultimate authority. *Reynard*, *supra.*, is cited by them for holding the Commerce Clause authorizes the taking of Hook's blood. However, Hook's blood travels only in his veins, not interstate or foreign commerce.[16] "All felonies" as the basis for imposing DNA Extraction is well beyond the legal limits of

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[16]While on supervised release, Hook is confined to the Northern District of Illinois. He may travel elsewhere only with the permission of PO Morton. Hook has not been out-of-state during the entire time of this controversy, which commenced with the PO's letter of 10/05/06.

Congress Constitutional authority and, accordingly, a violation of the 10th Amendment. To hold Hook does not have power over his blood, that the federal government and the States do, is ludicrous. It is obviously one of his inalienable rights not requiring any written authority.

Hook has the Article IV, §2 Rights[17] to equal protection and due process which are violated by US' DNA Extraction. This section guarantees the same privileges and immunities that other citizens enjoy. Citizens enjoy all of the Constitutional rights and immunities that are set forth hereinbefore. To deny them to Hook because he is on supervised release for federal offenses which had nothing to do with body fluids and which is based solely on an *ex post facto* bill of attainder is a gross denial of equal application and protection of the laws which has no justifiable categorical basis. Felons meet the criteria of a highly selective group inherently suspect of criminal activities, *Albertson v. Subversive Activities Control Board*, 382 US 70, 79 (1965), as to which DNA pointing is an unconstitutional violation of equal protection. Forced DNA registration is no different from forced registration as a member of the Communist Party! Furthermore, such discrimination is "irrational" because there is no credible indication that a person who has committed a crime not involving body fluid will do so or that his "recidivism" encompasses such an uncharacteristic crime, making it a denial of equal protection in violation of the Constitution. If accuracy were the pristine purpose of the Justice for All Act of 2004, selecting only convicts for DNA extortion rather than the whole population is certainly a denial of equal protection. Finally, according sanctity of

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[17] Imported thereinto after the passage of the 14th Amendment if not free standing under the 9th Amendment theretofore.

contract to others and not to convicts is a denial of equal protection. *Dartmouth College v. Woodward*, 17 US 518 (1819).

US's DNA Extraction also violates the doctrine of separation of powers which underlies the specific provisions of the United States Constitution. The Probation Office is an adjunct of the Judiciary. 42 USC 14135a(e)(2) requires the Director of the Administrative Office of the United States Courts to make available model procedures for DNA Collection by Probation Officers. Probation Officers are required to submit blood samples they obtain to the FBI, an executive branch agency, for eternal custody. But Congress' stated purpose in promulgating 42 USC 14135a has nothing to do with the purposes of supervised release or the functions of probation officers.

The Justice for All Act of 2004 applies "as determined by the Attorney General" to "any felony." The Attorney General made his determination, effective 1/31/05. By leaving to the Attorney General the designation of the felonies to be included as qualifying felonies, Congress has delegated its legislative power to him in violation of the Constitutional structure. *Schecter Poultry Corp. v. US*, 295 US 395 (1935), *Whitman v. American Trucking Associations, Inc.*, 531 US 457 (2001), *Gonzales v. Oregon*, US , 126 S.Ct. 904 (2006). Nor can an agency cure unlawful delegation by limiting its discretion to actions pursuant to the statute. *Gonzales, supra., Touby v. US*, 500 US 160 (1991). No Congressional direction can avoid the proscription against unlawful delegation. *J.W. Hampton & Co. v. US*, 276 US 394, 409 (1928). *Mistretta v. U.S.*, 488 US 385 (1989) to the contrary cannot withstand *Booker* and needs to be overruled. Separation is intended as a bulwark against tyranny. James Madison wrote that the accumula-

tion of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced tyranny. The courts duty is to guard us from it.

The opinion of the 7th Circuit Court of Appeals in this case is not the first that ignores material facts and worthy arguments. It has been done in each of the cases that Hook has presented to them. It has occurred in numerous others of which Hook is aware. In consequence, litigants in the Circuit do not receive a full and fair appeal based on the merits of their cases.

CONCLUSION

The Supreme Court should grant issue of its Writ of Certiorari and the remedies herein sought, to include declaring that the Justice for All Act of 2004 is unconstitutional in its application to Hook and declare that the United States of America cannot unilaterally and retrospectively add to the sentence imposed by the Sentencing Judge without violating the 4th, 5th, 8th, 9th, 10th, and 13th Amendments, Article I, §§ 8 and 9, Article IV, § 9 of the Constitution and separation of executive, judicial and legislative powers.

Respectfully submitted,

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